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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/529,136

03/23/2005

Federico Stroppolo

3504-0104

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7590

10/09/2008

ROTHWELL, FIGG, ERNST & MANBECK, P.C.

1425 K STREET, N.W.

SUITE 800

WASHINGTON, DC 20005

EXAMINER

PICKETT, JOHN G

ART UNIT

PAPER NUMBER

3728

NOTIFICATION DATE

DELIVERY MODE

10/09/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

Office Action Summary	Application No. 10/529,136	Applicant(s) STROPPOLO ET AL.	
	Examiner J. Gregory Pickett	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action acknowledges the applicant's amendment filed 8 July 2008.

Claims 6-17 are pending in the application. Claims 1-5 have been canceled.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

2. Claims 6-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Ray et al (US 5,944,191; previously provided).

Claim 6: Ray discloses a package (110, Figures 5-8) comprising a tray 112 having a series of spaced apart, generally rectangular sections (Figure 5, portions divided by unlabeled dotted lines) with a recessed compartment 120 and an upper surface 116; a sheet 114 fixed to the upper surface with a plurality of tab portions 132 not fixed to the tray (Col. 6:7-16), thereby creating a plurality of trapezoidal tab sections having a first end (narrow portion) and a second end (wide portion) that are graduated in width from the first end and increasing in width to the second end, the first end having two sides that are positioned in both corners of the spaced apart sections, the tab having a length (distance from narrow end to wide end) that is parallel to an unspecified and undefined length of the spaced apart portion. The area surrounding portion 135 (Figure 6) is sealed and therefore the tabs have the second end adjacent a fixed portion of the sheet of the corresponding spaced apart section.

Claim 7: The width of the second end (wide portion of trapezoid) is greater than half the width of the spaced apart sections.

Claims 8 and 9: The spaced apart portions of Ray form a matrix with the tabs in the center part and the direction of the widths of the second parts being substantially parallel to each other.

Claims 10 and 11: Ray discloses perforations 126 and 130.

Claims 12 and 13: Ray, as applied to claim 7 above, discloses the claimed invention.

Claims 14 and 15: The spaced apart portions of Ray form a matrix with the tabs in the center part and the direction of the widths of the second parts being substantially parallel to each other.

Claims 16 and 17: Ray discloses perforations 126 and 130.

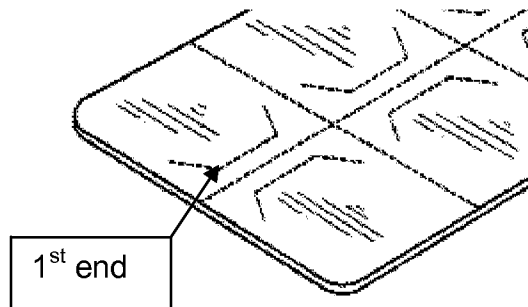
Response to Arguments

3. Applicant's arguments filed 8 July 2008 have been fully considered but they are not persuasive.

In accordance with MPEP 2111.01, during examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued,

will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969).

Applicant appears to be taking a very narrow view of the claim language. As shown below, Ray “reads on” the claims as presented.



(Excerpt from Figure 5)

The terminology, “positioned in a corner” of the spaced apart section may be interpreted broadly. The spaced apart section is a rectangle and “in a corner” may be considered to be located in any one of four quadrants of the rectangle. The tab as claimed, when interpreted broadly, does not have to incorporate the corner portion of the spaced apart section.

Applicant’s arguments against the child-resistant features of Ray are equally unpersuasive since a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. The fact that Ray may have additional features not claimed by the applicant are irrelevant since Ray “reads on” the claims as presented. Applicant uses the open terminology, “comprising”.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., immediate availability and removability) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The fact that Ray may have an additional structure to help push out the tab is irrelevant since the applicant uses the open terminology, "comprising".

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Gregory Pickett/
Primary Examiner, Art Unit 3728